IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 7003 of 1987
with
SPECIAL CIVIL APPLICATION No. 7004 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT.JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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JETHALAL GORDHANDAS SHAH & ORS. - Petitioner(s)
Versus
THE STATE OF GUJARAT & ANR. - Respondent(s)

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Appearance :
MR AJ PATEL, WITH MR JAYESH M PATEL, for Petitioner(s)
MS TANUJA N.KACHCHHI, ASSTT.GOVERNMENT PLEADER for Respondents.

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL

and

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 01/02/2007

COMMON ORAL JUDGMENT (Per: HON'BLE MR.JUSTICE J.M.PANCHAL)

1. Both these petitions relate to the lands situated at village Alikherva, Taluka: Sankheda, District: Vadodara. Since common questions of facts and law arise for consideration of the Court in these petitions and common reliefs are claimed in both the petitions, this Court proposes to dispose them of by this common judgment.

2. By filing Special Civil Application No.7003 of 1987 under Article 226 of the Constitution, the petitioners have prayed to issue a Writ of Mandamus directing the respondents to calculate and pay to them the additional amount of solatium at the enhanced rate of 30% and interest at the enhanced rate on the entire amount of compensation found payable in respect of Survey No.154 of Village: Alikherva, Taluka: Sankheda, District: Vadodara. Similarly, by filing Special Civil Application No.7004 of 1987

under Article 226 of the Constitution, the petitioners have prayed to issue a Writ of Mandamus directing the respondents to calculate and pay to them the additional amount of solatium at the enhanced rate of 30% and interest at the enhanced rate on the entire amount of compensation found payable in respect of Survey No.155 of Village: Alikherva, Taluka: Sankheda, District: Vadodara. In the alternative, in both the petitions, the petitioners have prayed to direct the respondent No.2 to make a Reference to the District Court under Section 18 of the Land Acquisition Act, 1894, ("the Act" for short) regarding their claim for additional amount of solatium at the enhanced rate of 30% and interest at the enhanced rate on the entire amount of compensation found payable to them.

3. The petitioners in Special Civil Application No.7003 of 1987 were the joint owners and occupiers of land bearing Survey No.154

admeasuring 1 Hectare – 48 Are – 42 sq.mts. situated at Village: Alikherva, Taluka: Sankheda, District: Vadodara. The petitioners in Special Civil Application No.7004 of 1987 were the joint owners and occupiers of land bearing Survey No.155 admeasuring 0 Hectare – 90 Are – 4 sq.mts. situated at Village: Alikherva, Taluka: Sankheda, District: Vadodara. The Superintending Engineer, Gujarat State Road Transport Corporation, made a proposal to the State Government to acquire the abovementioned lands for the public purpose of construction of S.T.Depot. On perusal of the said proposal, the State Government was satisfied that the abovementioned lands were likely to be needed for the said public purpose. Therefore, a notification under Section 4(1) of the Act was issued which was published in the official gazette on April 21, 1977. The petitioners in both the petitions have stated on oath in paragraph-3 of the petitions that the possession of the lands acquired was

taken over by the Government from the petitioners on October 6, 1977, which statement is not denied by the respondents. After considering the report of the Special Land Acquisition Officer which was submitted under Section 5-A(2) of the Act, a declaration under Section 6 of the Act was made which was published in the official gazette on March 29, 1979. The interested persons were thereafter served with notices for determination of amount of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.80/- per sq.mt. for Survey No.154 whereas for Survey No.155, compensation at the rate of Rs.35/- per sq.mt. was claimed. However, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.35/- per sq.mt. for Survey No.154 and Rs.15/- per sq.mt. for Survey No.155, by his award dated June 16, 1980. Feeling aggrieved, the claimants sought References. Accordingly,

References were made to the District Court, Vadodara, where they were registered as Land Reference Case No.27 of 1981 and Land Reference Case No.28 of 1981. It may be mentioned that Special Civil Application No.7003 of 1987 is concerned with Land Reference Case No.27 of 1981 whereas Special Civil Application No.7004 of 1987 is concerned with Land Reference Case No.28 of 1981. The Reference Court, on the basis of evidence adduced before it, awarded a sum of Rs.4,04,071/- as additional amount of compensation to the claimants by common judgment and award dated June 28, 1983. The Land Acquisition (Amendment) Bill, 1982, was introduced on April 30, 1982. The Bill became an Act on receiving the assent of the President on September 24, 1984. As per the Act which was amended in the year 1984, enhanced rate of 30% and also interest at the enhanced rate on the total amount of compensation was payable to the interested persons if awards were made by the Collector

or the Courts between April 30, 1982 and September 24, 1984. Therefore, the petitioners in Special Civil Application No. 7003 of 1987 addressed a representation dated July 23, 1985, to the Deputy Collector, Chhota Udepur, District: Vadodara, calling upon him to make payment of additional amount of compensation of Rs.11,87,578=38 ps. being the amount of enhanced solatium and additional interest on the amount of compensation found payable to them, whereas the petitioners in Special Civil Application No.7004 of 1987 addressed similar representation of the same date calling upon the Deputy Collector, Chhota Udepur, District: Vadodara, to make payment of Rs.4,18,183=80 ps. being the amount of enhanced solatium and additional interest awardable on the amount of compensation found payable to them. The abovereferredto two representations dated July 23, 1985, have been produced by the petitioners on the record of respective petition at Annexure-B

to the petition. On receipt of the representations, the Deputy Collector, Chhota Udepur, District: Vadodara, by communication dated May 4/9, 1987, informed the petitioners that pursuant to letter dated July 29, 1985, of the Revenue Department, Government of Gujarat, the claim for enhanced solatium and additional interest on the amount of compensation between the period from April 30, 1982 to September 24, 1984, was admissible, but the Supreme Court had delivered contradictory decisions on the point and as the issue was referred to Larger Bench of the Supreme Court, it was not possible for him to make payment of enhanced amount of solatium and grant additional interest on the amount of compensation found payable to them. A copy of the communication dated May 4/9, 1987, addressed by the Deputy Collector, Chhota Udepur, District: Vadodara, is produced at Annexure-C to both the petitions. Thereupon, the petitioners addressed applications dated June 22, 1987,

calling upon the Special Land Acquisition Officer and Deputy Collector, Chhota Udepur, District: Vadodara, to refer the issue, as to whether they were entitled to enhanced solatium at the rate of 30% and additional interest on the amount of compensation payable to them, to the Reference Court for its decision. A copy of the said application is produced by the petitioners at Annexure-D of each petition. On receipt of two applications, the Deputy Collector, Chhota Udepur, District: Vadodara, informed the petitioners by communication dated July 23, 1987, that award under Section 11 of the Act was made by him on June 16, 1980, against which References were sought and as the References were disposed of by the Reference Court, the prayer to refer the matter again to the Reference Court could not be accepted. A copy of the communication dated July 23, 1987, is produced by the petitioners on the record at Annexure-E to each petition.

4. The claim of the petitioners is that in view of the Five Judge Constitution Bench decision of the Supreme Court in *Union of India and Another v. Raghubir Singh (Dead) by LRs etc. - (1989)2 SCC 754*, the benefit of enhanced compensation and additional amount of interest on the amount of compensation payable conferred by the Land Acquisition (Amendment) Act, 1984, is available in respect of awards made after April 30, 1982, and therefore, the Deputy Collector, Chhota Udepur, District: Vadodara, should have accepted the prayer made by the petitioners to award them enhanced solatium at the rate of 30% as well as additional amount of interest payable on the amount of compensation awarded to them. According to the petitioners, after the decision of the Constitution Bench of the Supreme Court, no decision either allowing the claim made by the petitioners or rejecting the same is taken by the concerned officer which is illegal. What is asserted by the petitioners

is that in any view of the matter, the prayer made by the petitioners to refer the issues in question to the Reference Court for its decision should have been accepted by the Deputy Collector, Chhota Udepur, District: Vadodara. Under the circumstances, the petitioners have filed the instant petitions and claimed reliefs to which reference is made earlier.

5. Though these petitions have been admitted long back, no affidavit-in-reply has been filed by any of the respondents controverting the averments made in the petitions.

6. This Court has heard Mr.A.J.Patel, learned counsel for the petitioners and Ms.Tanuja N.Kachchhi, learned Assistant Government Pleader for the respondents in both the petitions. This Court has also considered the documents forming part of the petitions.

7. In *Union of India and Another v. Raghubir Singh (Dead) by LRs etc.* (supra), the

Constitution Bench of the Supreme Court has held that Sections 30(2) and 15 of the Land Acquisition (Amendment) Act, 1984, providing for increase in solatium to 30% under Section 23(2) of the Act applies to awards made by the Collector or Courts between April 30, 1982 and September 24, 1984, and not before. Again in *Shree Vijay Cotton & Oil Mills Ltd. v. State of Gujarat – (1991)1 SCC 262*, the Supreme Court has made the following pertinent observations in paragraphs-14 and 16 of the reported decision:

> *"14. The High Court while appreciating the point in issue did not consider the mandatory provisions of Section 34 of the Act. The said section specifically provides that when the amount of compensation is not paid on or before taking possession of the land the Collector shall pay interest at 6 per cent per annum from the date of taking over possession. The payment of interest is not dependent on any claim by the person whose land has been acquired. There can be no controversy or any lis between the parties regarding payment of interest. When once the provision of Section 34 are attracted it is obligatory for the Collector to pay the interest. If he fails to do so the same can be claimed from the Court in proceedings under Section 18 of the Act or even from the appellate court/ courts thereafter.*

... ...

16.There is inherent evidence in the wording of Sections 28 and 34 to show that the framers of the Act intended to assure the payment of interest to the person whose land was acquired and it was not the intention to subject the said payment to procedural hazards. Section 34 lays down that "the Collector shall pay the amount awarded with interest at 6 per cent per annum..." The legislative mandate is clear. It is a directive to the Collector to pay the interest in a given circumstance. Section 34 nowhere says that the interest amount is to be included in the award-decree as prepared under Section 23(1) read with Section 26 of the Act. Similarly Section 28 provides "the award of the Court may direct that the Collector shall pay interest". Here also the award under Section 23(1) read with Section 26 has been kept distinct from the payment of interest under the section. The interest to be paid under Section 34 and also under Section 28 is of different character than the compensation amount under Section 23(1) of the Act. Whereas the interest, if payable under the Act, can be claimed at any stage of the proceedings under the Act, the amount of compensation under Section 23(1) which is an award-decree under Section 26, is subject to the rules of Procedure and Limitation. The rules of procedure are hand-maiden of justice. The procedural hassle cannot come in the way of substantive rights of citizens under the Act."

What is relevant to notice is that in *Narain Das Jain (since deceased) By Lrs v. Agra*

Nagar Mahapalika, Agra – (1991)4 SCC 212, the Supreme Court has observed in paragraph-7 of the reported decision as under:

> *"7. The importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired, as a shadow would to a man. It springs up spontaneously as a part of the statutory growth on the determination and emergence of market value of the land acquired. It follows as a matter of course without any impediment. That it falls to be awarded by the court "in every case" leaves no discretion with the court in not awarding it in some cases an awarding in others. Since the award of solatium is in consideration of the compulsory nature of acquisition, it is a hanging mandate for the court to award and supply the omission at any stage where the court gets occasion to amend or rectify. This is the spirit of the provision, wherever made."*

8. From the relevant paragraphs quoted above, it becomes at once clear that the payment of interest is not dependent on any claim by the person whose land has been acquired. According to the Supreme Court, when once the provisions of Section 34 are attracted, it is obligatory for the Collector to pay interest and if he fails to do so, the same can be

claimed from the Court in proceedings under Section 18 of the Act or even from the appellate Court/ Courts thereafter. Further, importance of the award of solatium cannot be undermined by any procedural blockades. It follows automatically the market value of the land acquired. According to the Supreme Court, solatium has to be awarded by the Court in every case and statutory language leaves no discretion with the Court in not awarding it in some cases and awarding in others. Therefore, this Court is of the opinion that the respondent No.2 was not justified in not deciding the issues raised by the petitioners in their representations dated July 23, 1985, after delivery of the decision by Five Judge Constitution Bench of the Supreme Court. On the facts and in the circumstances of the case, this Court is of the opinion that no direction can be given to the respondent No.2 to calculate the amount of solatium and interest at the enhanced rate and pay the same to the petitioners because

that would amount to passing monetary decree in the petitions filed under Article 226 of the Constitution which is not permissible, but the interest of justice would be served if the respondent No.2 is directed to consider the representations dated July 23, 1985, made by the petitioners of both the petitions in accordance with law and within the time to be stipulated by the Court.

9. The learned counsel for the petitioners in Special Civil Application No.7003 of 1987 has conceded that the claim of the petitioner No.4 only regarding the enhanced solatium and additional interest on the amount of compensation awarded survives, and therefore, prayed that the Collector be directed to determine his share only. In view of the concession made at the Bar, appropriate directions will have to be issued to the respondent No.2 to consider only the claim of the petitioner No.4 in Special Civil Application No.7003 of 1987.

10. For the foregoing reasons, both the petitions partly succeed. The respondent No.2, i.e. The Deputy Collector, Chhota Udepur, District: Vadodara, is directed to consider the claims raised in representations dated July 23, 1985, made by the petitioners in each petition on merits in the light of decisions referred to in this judgment and in accordance with law, as early as possible and preferably on or before May 5, 2007, for the period between October 6, 1977, which is the date of taking over of possession of the lands acquired and July 23, 1985, which is the date of making representations demanding the benefits under the amended provisions of the Act. While considering the representations made by the petitioners in Special Civil Application No.7003 of 1987, the respondent No.2 shall take into consideration the claim made by the petitioner No.4 only. If the respondent No.2 finds that the petitioners are entitled to solatium at the enhanced rate and additional

amount of interest on the amount of compensation awarded to them, necessary steps will be taken by him to make the payment of the same to the petitioners as early as possible and without any avoidable delay.

11. Subject to abovereferred to directions, Rule is made absolute in each petition. There shall be no orders as to costs.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

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